

poses of the first and fourth questions.

LORDS McLAREN, KINNEAR, and the LORD PRESIDENT concurred.

The Court pronounced this interlocutor—

“In answer to the first question, Find and declare that in framing a scheme for the division and payment of the estate, the payments made to the married daughters on and after their respective marriages fall to be deducted from or imputed as part of their respective shares of residue as payments already paid to account, and that interest falls to be charged against them upon the said payments, in so far as made after marriage, from the respective dates thereof, but that no interest falls to be charged upon the payments of £1000 each to the married daughters on marriage: Find and declare further, in answer to the fourth question, that interest is chargeable at the rate of four per centum per annum: Authorise the expenses of all the parties to the case to be taken out of the trust funds,” &c.

Counsel for the First Parties—Gillespie. Agents—A. P. Purves & Aitken, W.S.

Counsel for the Second Parties—Comrie Thomson—Cook. Agents—W. & J. Cook, W.S.

Counsel for the Third Parties—C. S. Dickson—Deas. Agents—A. P. Purves & Aitken, W.S.

Counsel for the Fourth Party—Guthrie—Ure. Agents—Simpson & Marwick, W.S.

Tuesday, July 19.

#### FIRST DIVISION.

#### W. MORRISON & COMPANY, LIMITED, PETITIONERS.

*Company—Reduction of Capital—Confirmation of Resolution to Reduce—Replacing of Lost Capital—Incompetent Procedure—Companies Act 1862, secs. 9 and 19—Companies Act 1877, secs. 3 and 4.*

The Court refused to confirm a special resolution of a joint stock company, which purported to reduce the capital of the company, but which really only reduced the amount paid up upon each share with the view of thereby replacing certain capital which had been lost.

Upon 14th May 1892 W. Morrison & Company, Limited, printers and publishers, Hawick, presented a petition to the First Division of the Court of Session under the Companies Act 1867, sections 9 and 19, and the Companies Act 1877, sections 3 and 4, praying the Court, after due intimation and advertisement, “to pronounce an order confirming the reduction of capital resolved on by special resolution of 23rd March 1892.”

The petitioners set forth that “by the memorandum of association it was declared that the capital of the company was £2000 sterling, divided into 2000 shares of £1 each, 1000 of which we recalled ‘founders’ shares,’ and the others ‘ordinary shares.’ All the shares into which the capital of the company was divided have been issued. The sum of £1 has been paid up on each share issued. Since its incorporation the company has carried on the business for which it was formed. It has been found necessary to reduce the capital of the company in consequence of the price paid by the company for the business of William Morrison & Company, printers and publishers, Hawick, having been at least £500 in excess of the real value of the concern, and of the original capital of the company having thus been lost to the extent of £500. With the object mentioned in the last paragraph, the company accordingly, of these dates, March 8th 1892, and March 23th 1892, passed and confirmed the following special resolution:—‘That the following article be added to the articles of association—The company shall have power, by special resolution, to modify the conditions contained in its memorandum of association, so as to increase or reduce its nominal or paid-up capital, or to reduce the amount paid up in the nominal capital;’ and of these dates, March 23rd 1892, and April 7th 1892, passed and confirmed the following special resolution—‘Being satisfied that the price paid by the company for the business of William Morrison & Company, printers and publishers, Hawick, was at least £500 in excess of the real value of the concern, and that the original capital of the company has thus been lost to the extent of £500, it is hereby resolved to modify the conditions contained in the company’s memorandum of association to the effect of reducing its paid-up capital from £2000 to £1500 as follows, viz. — 1000 founders’ shares of £1 each, fully paid up, to 1000 founders’ shares of £1 each, with 15s. per share paid up; and 1000 ordinary shares of £1 each, fully paid up, to 1000 ordinary shares of £1 each, with 15s. per share paid up. And the said paid-up capital is hereby declared to be reduced accordingly.’”

Upon 1st June 1892 the Court remitted to Mr Charles B. Logan, W.S., to inquire and report as to the regularity of the proceedings, and the reasons for the proposed reduction.

Upon 14th July 1892 Mr Logan reported, *inter alia*, as follows—“The effect of the above resolution, [viz., the resolution to reduce, set forth *supra*.] would be that instead of the whole capital of £2000 being held to be fully paid up as at present, only £1500, or 15s. per share, would be deemed to be paid up, the remaining £500 of the paid-up capital being cancelled or written off as paid up, but revived as uncalled capital, with the sum of 5s. per share on the whole shares remaining uncalled. This would imply not only a reduction of the present capital, which is competent, but the creation, in an irregular manner,

of £500 of new capital to be called up, with the imposition upon the shareholders of an additional liability which does not attach to them at present. It appears to me that the course proposed is irregular, and that the proper course for the company to have adopted (if they desired to raise £500 of new capital) would have been to have passed a resolution reducing their present capital from 1000 founders' shares of £1 each fully paid up to 1000 founders' shares of 15s. each fully paid up, and 1000 ordinary shares of £1 each fully paid up to 1000 ordinary shares of 15s. each fully paid up; and thereafter to have created £500 of new capital in the manner authorised by the Companies Act 1862, and articles 26 to 28 of Table A appended to that Act. It does not appear to me that the resolution of the company is one which your Lordships can be competently called upon to confirm. . . . From the last report and balance-sheet of the company, and information supplied to me, I am satisfied that the amount of loss of capital, and the explanations of the petitioners as to how it has arisen, are substantially correct, and that the reasons so stated are sufficient to warrant the reduction. . . . I am satisfied that the resolutions, if competent in themselves, were regularly passed and confirmed in conformity with the statutes and regulations of the company. . . . If your Lordships should be of opinion that, notwithstanding the doubts I have suggested, the resolution sought to be confirmed is competent, I have humbly to report that the whole proceedings prior to and since the date of the presentation of the petition have been regular, and the proposed reduction appearing to be warranted, an order may be pronounced confirming the reduction, and granting the prayer of the petition."

Argued for the petitioners—They might have reduced their capital by one resolution, and replaced it, in the way suggested by the reporter, after a second resolution. That they had sought to attain their object by a different method set forth in one resolution did not make the resolution to reduce incompetent. That resolution ought to be confirmed.

At advising—

LORD KINNEAR—I am of opinion that the objection, which the reporter has stated to the proposal here, is perfectly well founded, and I do not think that that objection could be more clearly brought out than by comparing the prayer of the petition with the statement of the reporter as to what the company really proposes to do.

We are asked to confirm a special resolution to reduce capital, but when we come to consider the matter we find that the company does not propose to reduce its capital at all, but to raise £500 of new capital to replace what has been lost. That is an incompetent proceeding. The company can do what they desire only by complying with the provisions prescribed by the Companies Acts 1862 and 1886, and they are not entitled under colour of doing

one thing to do something totally different.

I think we cannot grant the prayer of this petition.

LORD ADAM—The resolution founded upon is said to be a resolution to reduce capital, but it is not so at all. There is here only one resolution with reference to one and the same Act to be done at one and the same time. That Act leaves the capital of the company where it was before, the only difference being that at the end of the operation, while the capital will be the same, only £1500 will have been fully paid up, and £500 will remain uncalled up.

This is not a resolution to induce capital, and I agree in thinking we cannot confirm it.

LORD M'LAREN—I agree. What the company propose is to reduce the nominal capital, and to replace by real cash capital which has been actually contributed but has been lost. I agree that we cannot give power to the company to do this in the way they propose, but I have no doubt that by following the course indicated by Mr Logan in his report the end desired may be accomplished.

The LORD PRESIDENT concurred.

The Court refused the prayer of the petition.

Counsel for Petitioner—Neish. Agents—Fife, Ireland, & Dangerfield, S.S.C.

Tuesday, July 19.

#### FIRST DIVISION.

#### THE EARL OF ROSEBERY AND OTHERS, PETITIONERS.

*Trust—County Hall Held by Trustees—Transference of Trust Property to County Council—Local Government Scotland Act 1889 (52 and 53 Vict. c. 50) sec. 25, sub-sec. (2)—Nobile officium.*

A petition by trustees who represented the different public interests of a county, and who held as trust-property for various county purposes a county hall erected about 1819, to be allowed to transfer the said hall to the county council, and for exoneration and discharge, was granted.

The Right Honourable Archibald Philip, Earl of Rosebery, Her Majesty's Lieutenant and High Sheriff of the county of Linlithgow; Peter M'Lagan of Pumpherston, Vice-Lieutenant of the said county, and also Member of Parliament for the said county; Thomas Hope of Bridge Castle, convener of the said county; Alexander Blair, advocate, Sheriff-Depute of the said county; and Andrew Gilmour, Provost of the royal burgh of Linlithgow, as trustees for themselves and in trust for and in name and on behalf of the whole other noblemen, deputy-